

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CARL RUSSELL, pro se,

Plaintiff,
v.

CIVIL ACTION
NO. 04-30171-MAP

FRANKLIN COUNTY
FRANKLIN COUNTY SHERIFF MACDONALD
FRANKLIN COUNTY SHERIFF'S DEPARTMENT,
FRANKLIN COUNTY HOUSE OF CORRECTIONS,
SUPERINTENDENT BYRON,
DEPUTY SUPERINTENDENT SHEPARD,
DEPUTY SUPERINTENDENT HILL,
DEPUTY SUPERINTENDENT FITZPATRICK,
FRANKLIN COUNTY HOUSE OF CORRECTIONS
MEDICAL DEPARTMENT
NURSE MORNINGSTAR, MEDICAL ADMINISTRATOR,
DEPARTMENT OF HOMELAND SECURITY
Defendants.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Pursuant to the provisions of Rule 56 of the Massachusetts Rules of Civil Procedure, the Defendants, Franklin County Sheriff Macdonald, Franklin County Sheriff's Department, Franklin County House of Corrections, Superintendent Byron, Deputy Superintendent Shepard, Deputy Superintendent Hill, Deputy Superintendent Fitzpatrick, Franklin County House of Corrections Medical Department and Nurse Morningstar, Medical Administrator moves this Court to enter summary judgment in their favor because the Plaintiff has failed to state a claim upon which relief can be granted.

In support of such Motion, the Defendants state that the Plaintiff Carl Russell is no longer a resident of Franklin County House of Corrections. *See Affidavit of Sheriff Macdonald attached.* The Plaintiff is barred from any injunctive relief. *Purvis v. Ponte*, 929 F.2d 822,825 (1st Cir. 1991) (holding that former inmate's action against prison officials was moot because he no longer resided at the prison) *Also see Patrick E. Dullen v. Sheriff Macdonald*, C.A. No. 05-30101-KPN and *Omar Marrero v. Franklin County, et al.*, C.A. No. 04-30230-KPN

Further, insofar as the Plaintiff's suit is brought against the Defendants in their official capacities as state administrators, it is barred under the Eleventh Amendment to the United States Constitution, which proscribes damage suits against states or its officials in their official capacities without their consent. *See Florida Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank*, 527 U.S. 627, 634 (1999); *Hans v. Louisiana*, 134 U.S. 1,20 (1890) and *Greenless v. Almond*, 277 F.3d 601, 606-07 (1st Cir. 2002)

WHEREFORE, the Defendants respectfully request that summary judgment be entered in their favor in the above-entitled action as the plaintiff has failed to state a claim upon which relief can be granted.

Respectfully submitted,
Commonwealth of Massachusetts
By Its Attorney,

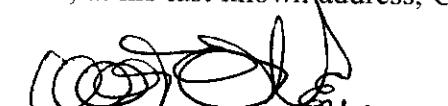
THOMAS F. REILLY
ATTORNEY GENERAL



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Assistant Attorney General
Western Massachusetts Division
1350 Main Street
Springfield, MA 01103-1629
(413)784-1240 FAX: 784-1244

CERTIFICATE OF SERVICE

I, William P. O'Neill, Assistant Attorney General, hereby certify that on September 22, 2005, I served a copy of the foregoing Table of Contents, Affidavit, and a Certificate of Service by first-class Mail, postage prepaid upon plaintiff pro se, at his last known address, Carl Russell, 160 Elm Street, Greenfield, Massachusetts 01301



William P. O'Neill
Assistant Attorney General

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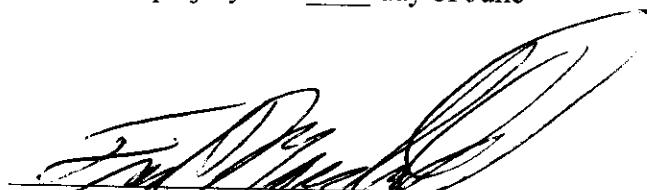
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Defendants.

**AFFIDAVIT OF FRED MACDONALD AS SHERIFF OF FRANKLIN COUNTY HOUSE
OF CORRECTIONS**

I, Fred McDonald, do hereby depose and state under oath as follows:

1. I am the Sheriff of Franklin County House of Corrections in Franklin County.
2. Carl Russell was incarcerated from March 11, 2004 to March 31, 2005.
3. Mr. Russell is no longer being housed in the Franklin County House of Corrections.

This statement is made under the pains and penalties of perjury this 29th day of June
2005.


Sheriff Fred Macdonald
Franklin County House of Corrections